

\* AO 120 (Rev. 2/99)

<b>TO: Mail Stop 8</b> <b>Director of the U.S. Patent &amp; Trademark Office</b> <b>P.O. Box 1450</b> <b>Alexandria, VA 22313-1450</b>	<b>REPORT ON THE</b> <b>FILING OR DETERMINATION OF AN</b> <b>ACTION REGARDING A PATENT OR</b> <b>TRADEMARK</b>
---	---

In Compliance with 35 § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been  
 filed in the U.S. District Court, Northern District California, on the ☒ Patents or ☐ Trademarks:

DOCKET NO <b>CV 10-05672 JCS</b>	DATE FILED 12/13/10	U.S. DISTRICT COURT 450 Golden Gate Avenue, 16 <sup>th</sup> Floor, San Francisco CA 94102
PLAINTIFF <b>SHUTTERFLY INC</b>		DEFENDANT <b>EASTMAN KODAK COMPANY, ET AL</b>
PATENT OR	DATE OF PATENT	HOLDER OF PATENT OR TRADEMARK
1 <i>7 Pat. ft. l</i>		***See Attach Complaint***
2		
3		
4		
5		

In the above—entitled case, the following patent(s) have been included:

DATE INCLUDED	INCLUDED BY	
		<input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1		
2		
3		
4		
5		

In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT
--------------------

CLERK Richard W. Wiekling	(BY) DEPUTY CLERK Gina Agustine-Rivas	DATE December 16, 2010
------------------------------	--	---------------------------

Copy 1—Upon initiation of action, mail this copy to Commissioner Copy 3—Upon termination of action, mail this copy to Commissioner  
 Copy 2—Upon filing document adding patent(s), mail this copy to Commissioner Copy 4—Case file copy

CHAMBER'S  
COPY

ORIGINAL  
FILED

DEC 18 2010

RECORDED & INDEXED  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

E-filing

JCS

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SHUTTERFLY, INC.

Plaintiff,

v.

EASTMAN KODAK COMPANY, and KODAK  
IMAGING NETWORK, INC.

Defendants.

Case No. **CV 10 5672**

COMPLAINT FOR PATENT  
INFRINGEMENT

JURY TRIAL DEMANDED

ECF DOCUMENT

I hereby attest and certify this is a printed copy of a  
document which was entered into the filed with the United States  
District Court for the Northern District of California.

Date filed

RICHARD A. WILKINS

By: **GINA AGOSTINE**

Deputy Clerk

1 Plaintiff Shutterfly, Inc. ("Shutterfly"), a Delaware corporation, by and through its attorneys,  
2 states as follows:

3 **NATURE OF THE ACTION**

4 1. This is an action brought by Shutterfly against the Eastman Kodak Company ("Eastman  
5 Kodak") and Kodak Imaging Network, Inc. ("KIN") (collectively "Kodak") for infringement of U.S.  
6 Patent Nos. 6,583,799 ("the '799 Patent"), 7,269,800 ("the '800 Patent"), 6,587,596 ("the '596 Patent"),  
7 6,973,222 ("the '222 Patent"), 7,474,801 ("the '801 Patent"); 7,016,869 ("the '869 Patent") and  
8 7,395,229 ("the '229 Patent") (collectively, "the Asserted Patents").

9 **THE PARTIES**

10 2. Plaintiff Shutterfly is a Delaware corporation with its principal place of business at 2800  
11 Bridge Parkway, Redwood City, California.

12 3. Defendant Eastman Kodak is a New Jersey corporation with its principal place of business  
13 at 343 State Street, Rochester, New York.

14 4. Defendant KIN is a Delaware corporation with its principal place of business at 1480 64<sup>th</sup>  
15 Street, Emeryville, California. KIN is a subsidiary of Eastman Kodak.

16 **JURISDICTION AND VENUE**

17 5. This is an action arising under the patent laws of the United States. Accordingly, this  
18 Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

19 6. This Court has personal jurisdiction over Defendants. On information and belief  
20 Defendants have transacted business in this District, supplied goods or services in this District directly or  
21 through their agents, purposely availed themselves of the privileges and benefits of the laws of this state,  
22 and committed acts of patent infringement during the course of their business in this District. Defendant  
23 KIN's headquarters and business operations are based Emeryville, California, in this district. Personal  
24 jurisdiction and venue are therefore proper in this District pursuant to 28 U.S.C. §§ 1391 and 1400(b).

25 7. Plaintiff Shutterfly is also headquartered, and has its business operations, in this District.

26 **INTRADISTRICT ASSIGNMENT**

27 8. For purposes of intradistrict assignment pursuant to Civil Local Rules 3-2(c) and 3-5(b),  
28

1 this Intellectual Property Action is to be assigned on a district-wide basis.

2 **FIRST CLAIM FOR RELIEF**

3 **(Infringement of U.S. Patent No. 6,583,799)**

4 9. Paragraphs 1 through 8 are incorporated by reference as if fully stated herein.

5 10. Shutterfly owns by assignment the entire right, title, and interest in and to the '799 Patent  
6 including the right to bring this suit for damages. The '799 Patent issued on June 24, 2003 and is entitled  
7 "Image Uploading." A true and correct copy of the '799 Patent is attached as Exhibit A and incorporated  
8 herein by reference.

9 11. The '799 Patent is valid and enforceable under the United States Patent Laws.

10 12. Kodak has infringed and is infringing at least claim 1 of the '799 Patent, in violation of 35  
11 U.S.C. § 271 *et seq.*, by, including but not limited to, making, using, offering for sale, selling in the  
12 United States, and/or importing into the United States, without authority, Kodak Gallery Upload  
13 Software.

14 13. Shutterfly has been and will continue to be irreparably damaged by Kodak's infringement  
15 of the '799 patent.

16 14. Kodak's infringement will continue unless enjoined by this court.

17 **SECOND CLAIM FOR RELIEF**

18 **(Infringement of U.S. Patent No. 7,269,800)**

19 15. Paragraphs 1 through 14 are incorporated by reference as if fully stated herein.

20 16. Shutterfly owns by assignment the entire right, title, and interest in and to the '800 Patent  
21 including the right to bring this suit for damages. The '800 Patent issued on September 11, 2007 and is  
22 entitled "Restartable Image Uploading." A true and correct copy of the '800 Patent is attached as Exhibit  
23 B and incorporated herein by reference.

24 17. The '800 Patent is valid and enforceable under the United States Patent Laws.

25 18. Kodak has infringed and is infringing at least claim 1 of the '800 Patent, in violation of 35  
26 U.S.C. § 271 *et seq.*, by, including but not limited to, making, using, offering for sale, selling in the  
27 United States, and/or importing into the United States, without authority, Kodak Gallery Upload  
28

Software.

19. Shutterfly has been and will continue to be irreparably damaged by Kodak's infringement of the '800 patent.

20. Kodak's infringement will continue unless enjoined by this court.

**THIRD CLAIM FOR RELIEF**

**(Infringement of U.S. Patent No. 6,587,596)**

21. Paragraphs 1 through 20 are incorporated by reference as if fully stated herein.

22. Shutterfly owns by assignment the entire right, title, and interest in and to the '596 Patent including the right to bring this suit for damages. The '596 Patent issued on July 1, 2003 and is entitled "System and Method of Cropping an Image." A true and correct copy of the '596 Patent is attached as Exhibit C and incorporated herein by reference.

23. The '596 Patent is valid and enforceable under the United States Patent Laws.

24. Kodak has infringed and is infringing at least claim 1 of the '596 Patent, in violation of 35 U.S.C. § 271 *et seq.*, by, including but not limited to, making, using, offering for sale, selling in the United States, and/or importing into the United States, without authority, the Kodak Gallery Software.

25. Shutterfly has been and will continue to be irreparably damaged by Kodak's infringement of the '596 patent.

26. Kodak's infringement will continue unless enjoined by this court.

**FOURTH CLAIM FOR RELIEF**

**(Infringement of U.S. Patent No. 6,973,222)**

27. Paragraphs 1 through 26 are incorporated by reference as if fully stated herein.

28. Shutterfly owns by assignment the entire right, title, and interest in and to the '222 Patent including the right to bring this suit for damages. The '222 Patent issued on December 6, 2005 and is entitled "System and Method of Cropping an Image." A true and correct copy of the '222 Patent is attached as Exhibit D and incorporated herein by reference.

29. The '222 Patent is valid and enforceable under the United States Patent Laws.

30. Kodak has infringed and is infringing at least claim 1 of the '222 Patent, in violation of 35 U.S.C. § 271 *et seq.*, by including but not limited to, making, using, offering for sale, selling in the United States, and/or importing into the United States, without authority, the Kodak Gallery Software.

31. Shutterfly has been and will continue to be irreparably damaged by Kodak's infringement of the '222 patent.

32. Kodak's infringement will continue unless enjoined by this court.

#### **FIFTH CLAIM FOR RELIEF**

##### **(Infringement of U.S. Patent No. 7,474,801)**

33. Paragraphs 1 through 32 are incorporated by reference as if fully stated herein.

34. Shutterfly owns by assignment the entire right, title, and interest in and to the '801 Patent including the right to bring this suit for damages. The '801 Patent issued on January 6, 2009 and is entitled "Automatic Generation of a Photo Album." A true and correct copy of the '801 Patent is attached as Exhibit E and incorporated herein by reference.

35. The '801 Patent is valid and enforceable under the United States Patent Laws.

36. Kodak has infringed and is infringing at least claim 1 of the '801 Patent, in violation of 35 U.S.C. § 271 *et seq.*, by, including but not limited to, making, using, offering for sale, selling in the United States, and/or importing into the United States without authority, the Kodak Gallery Software.

37. Shutterfly has been and will continue to be irreparably damaged by Kodak's infringement of the '801 patent.

38. Kodak's infringement will continue unless enjoined by this court.

#### **SIXTH CLAIM FOR RELIEF**

##### **(Infringement of U.S. Patent No. 7,016,869)**

39. Paragraphs 1 through 38 are incorporated by reference as if fully stated herein.

40. Shutterfly owns by assignment the entire right, title, and interest in and to the '869 Patent including the right to bring this suit for damages. The '869 Patent issued on March 21, 2006 and is entitled "System and Method of Changing Attributes of an Image-Based Product." A true and correct copy of the '869 Patent is attached as Exhibit F and incorporated herein by reference.

41. The '869 Patent is valid and enforceable under the United States Patent Laws.

42. Kodak has infringed and is infringing at least claim 1 of the '869 Patent, in violation of 35 U.S.C. § 271 *et seq.*, by, including but not limited to, making, using, offering for sale, selling in the United States, and/or importing into the United States, without authority, the Kodak Gallery Software.

43. Shutterfly has been and will continue to be irreparably damaged by Kodak's infringement of the '869 patent.

44. Kodak's infringement will continue unless enjoined by this court.

#### **SEVENTH CLAIM FOR RELIEF**

##### **(Infringement of U.S. Patent No. 7,395,229)**

45. Paragraphs 1 through 44 are incorporated by reference as if fully stated herein.

46. Shutterfly owns by assignment the entire right, title, and interest in and to the '229 Patent including the right to bring this suit for damages. The '229 Patent issued on July 1, 2008 and is entitled "System and Method of Changing Attributes an Image-Based Product." A true and correct copy of the '229 Patent is attached as Exhibit G and incorporated herein by reference.

47. The '229 Patent is valid and enforceable under the United States Patent Laws.

48. Kodak has infringed and is infringing at least claim 1 of the '229 Patent, in violation of 35 U.S.C. § 271 *et seq.*, by, including but not limited to, making, using, offering for sale, selling in the United States, and/or importing into the United States, without authority, the Kodak Gallery Software.

49. Shutterfly has been and will continue to be irreparably damaged by Kodak's infringement of the '229 patent.

50. Kodak's infringement will continue unless enjoined by this court.

#### **PRAYER FOR RELIEF**

WHEREFORE, Shutterfly prays that this Court:

(A) Enter judgment that Kodak has infringed each and every one of the Asserted Patents;

(B) Enter an order enjoining Kodak, its officers, agents, employees, and those persons in active concert or participation with any of them, and its successors and assigns, from infringing each and every one of the Asserted Patents;

(C) Award Shutterfly its damages resulting from Kodak's patent infringement pursuant to 35 U.S.C. § 284;

(D) Find that Kodak's infringement has been willful and increase the damages awarded to Shutterfly to three times the amount assessed, pursuant to 35 U.S.C. § 284;

(E) Find this to be an exceptional case and award Shutterfly its attorneys' fees, pursuant to 35 U.S.C. § 285;

(F) Award Shutterfly its prejudgment and post judgment interests on its damages;

(G) Award Shutterfly its costs; and

(H) Award Shutterfly such other and further relief as this Court deems just and appropriate.

**DEMAND FOR JURY TRIAL**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Shutterfly demands a trial by jury of this action.

Dated: December 13, 2010

DURIE TANGRI LLP

By: 

JOSHUA H. LERNER

Attorneys for Plaintiff  
SHUTTERFLY, INC.